poultry food, said that it would be unfair to forfeit all the poultry food bags because they happened to be piled up on top and around the dutiable goods. He also said that the dutiable goods were separately packed in their own packages and just placed under the bags.

The learned Deputy Public Prosecutor also reminded me that poultry food is an article which is not subject to any restriction for its importation into Malaya.

In my opinion the question the learned President had to consider was merely whether or not the bags of poultry food had been deliberately used to conceal the dutiable articles. Whether they were so used or not would depend on the facts of the case.

In this case there is no doubt that the bags were specially arranged to deliberately conceal the dutiable goods, and though it is true that to conceal those dutiable goods it would not appear necessary to utilise all the bags, it is equally true that the more bags were used the less would be the chance of detection. In my view it is not necessary for the prosecution to prove that the bags of poultry food were specially bought or procured for the purpose of concealing the dutiable goods. It is sufficient that the bags had been deliberately used to conceal the latter.

I would, therefore, in the circumstances of case hold that the President should have held that these goods were liable to seizure under section 110(4) and therefore liable to forfeiture under section 122.

I would, therefore, set aside the order of the learned President and direct that the proceeds of the sale of the 160 bags now in possession of the Court be forfeited to the Government.

Order accordingly.

MOHAMED SHARIFF v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) January 22, 1964]

[Singapore — Magistrate's Appeal No. 208 of 1963]

Criminal Procedure—Appeal—Question of fact—Inadequate scrutiny of evidence—Failure to consider defence—Setting aside conviction.

In this case the appellant was found guilty of theft because the learned Magistrate believed the prosecution witnesses and disbelieved the appellant's evidence. He treated the case purely as one of theft in relation to an article and failed to consider whether or not the evidence relating to the hostility between the respective employers of the main witnesses who spoke of the actual alleged theft.

Held: (1) this was a case where at the very least the evidence adduced by the defence would create a reasonable doubt whether or not the appellant had committed the offence alleged by the prosecution;

(2) the appellate court was not precluded from looking at the matter afresh and as the learned Magistrate had failed to consider the defence evidence the conviction should be set aside.

[**Editorial Note:** this case is of interest as it is an appeal solely on facts. Counsel referred the Court to *Wintle* v. *Nye* [1959] 1 All E.R. 552; *R.* v. *Ong Choon* [1938] M.L.J. 227; and *Letchumy* v. *Public Prosecutor* (1930), 1 M.C. 129, 131].

MAGISTRATE'S APPEAL.

David Marshall for the appellant.

S.R. Chapkhana (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J.: One starts looking at this appeal from the position that the learned Magistrate has found the appellant guilty because he believed the prosecution witnesses and disbelieved the appellant's evidence as to what took place at the shop on the afternoon in question. If the evidence had been merely as to the incident with regard to the alleged theft I do not think any Court would disturb the Magistrate's finding of fact. But having looked through the record myself and having my attention drawn by counsel for the appellant and looking at the actual article that the appellant was alleged to have stolen it is in my view important then to consider all the evidence that appears in the record of this trial. The learned Magistrate has so I understand from his judgment treated this case purely as one of theft in relation to an article and shut his mind from considering whether or not the evidence relating to the hostility, if it is not too strong a word, between the respective employers of the main witnesses who spoke of the actual alleged theft. Now reading this record without hearing the evidence and seeing the witnesses it is to my mind obviously a case where at the very least the evidence adduced by the defence would create a reasonable doubt whether or not the appellant had committed the offence alleged by the prosecution. Now approaching it from that angle, having considered the judgment of the learned Magistrate I cannot find in it anything which suggests that view of the case ought not to prevail because of the demeanour of the witnesses and the impressions obtained of the witnesses before him.

There is nothing in that judgment which to my mind precludes me from looking at the matter afresh so to speak and although giving due consideration and due weight to the findings of fact by the learned trial Magistrate I can properly and in this particular case I ought to hold that the conviction should be set aside not so much that it was against the weight of the evidence but because in my view the learned trial Magistrate had failed to consider all the evidence that was before him and in that sense had failed to consider the defence evidence.

I would therefore allow this appeal and set aside the conviction and sentence.

Appeal allowed.